



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1357

Introduced 2/8/2011, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

415 ILCS 5/31

from Ch. 111 1/2, par. 1031

Amends the Environmental Protection Act. Requires the person complained against, when filing certain responses with the Environmental Protection Agency, to provide the proposed terms for a Compliance Commitment Agreement (CCA) rather than the proposed CCA. Requires the Agency to provide the proposed CCA or a notice that certain violations cannot be resolved without the involvement of the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred (now, the party complained against provides the proposed CCA). Authorizes the Agency's proposed CCA to include a proposed administrative penalty of not more than \$10,000. Requires the person complained against to accept or reject the proposed CCA within 30 days after receiving it. Provides that if the person complained against fails to respond to the proposed CCA within that time frame, then the proposed CCA is deemed rejected by operation of law. Authorizes written amendments to CCAs. Prohibits violations of CCAs. Grants the Agency certain rulemaking authority. Makes technical changes. Effective immediately.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 31 as follows:

6 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

7 Sec. 31. Notice; complaint; hearing.

8 (a)(1) Within 180 days after ~~of~~ becoming aware of an
9 alleged violation of the Act, or ~~or~~ any rule adopted under the
10 Act, or ~~or~~ of a permit granted by the Agency, or a condition
11 of such a ~~the~~ permit, the Agency shall issue and serve, by
12 certified mail, upon the person complained against a
13 written notice informing that person that the Agency has
14 evidence of the alleged violation. At a minimum, the
15 written notice shall contain:

16 (A) a notification to the person complained
17 against of the requirement to submit a written response
18 addressing the violations alleged and the option to
19 meet with appropriate agency personnel to resolve any
20 alleged violations that could lead to the filing of a
21 formal complaint;

22 (B) a detailed explanation by the Agency of the
23 violations alleged;

1 (C) an explanation by the Agency of the actions
2 that the Agency believes may resolve the alleged
3 violations, including an estimate of a reasonable time
4 period for the person complained against to complete
5 the suggested resolution; and

6 (D) an explanation of any alleged violation that
7 the Agency believes cannot be resolved without the
8 involvement of the Office of the Illinois Attorney
9 General or the State's Attorney of the county in which
10 the alleged violation occurred and the basis for the
11 Agency's belief.

12 (2) A written response to the violations alleged shall
13 be submitted to the Agency, by certified mail, within 45
14 days after ~~of~~ receipt of notice by the person complained
15 against, unless the Agency agrees to an extension. The
16 written response shall include:

17 (A) information in rebuttal, explanation or
18 justification of each alleged violation;

19 (B) proposed terms for a ~~proposed~~ Compliance
20 Commitment Agreement that includes specified times for
21 achieving each commitment and which may consist of a
22 statement indicating that the person complained
23 against believes that compliance has been achieved;
24 and

25 (C) a request for a meeting with appropriate Agency
26 personnel if a meeting is desired by the person

1 complained against.

2 (3) If the person complained against fails to respond
3 in accordance with the requirements of subdivision (2) of
4 this subsection (a), the failure to respond shall be
5 considered a waiver of the requirements of this subsection
6 (a) and nothing in this Section shall preclude the Agency
7 from proceeding pursuant to subsection (b) of this Section.

8 (4) A meeting requested pursuant to subdivision (2) of
9 this subsection (a) shall be held without a representative
10 of the Office of the Illinois Attorney General or the
11 State's Attorney of the county in which the alleged
12 violation occurred, within 60 days after ~~of~~ receipt of
13 notice by the person complained against, unless the Agency
14 agrees to a postponement. At the meeting, the Agency shall
15 provide an opportunity for the person complained against to
16 respond to each alleged violation, suggested resolution,
17 and suggested implementation time frame, and to suggest
18 alternate resolutions.

19 (5) If a meeting requested pursuant to subdivision (2)
20 of this subsection (a) is held, the person complained
21 against shall, within 21 days following the meeting or
22 within an extended time period as agreed to by the Agency,
23 submit by certified mail to the Agency a written response
24 to the alleged violations. The written response shall
25 include:

26 (A) additional information in rebuttal,

1 explanation, or justification of each alleged
2 violation;

3 (B) proposed terms for a ~~proposed~~ Compliance
4 Commitment Agreement that includes specified times for
5 achieving each commitment and which may consist of a
6 statement indicating that the person complained
7 against believes that compliance has been achieved;
8 and

9 (C) a statement indicating that, should the person
10 complained against so wish, the person complained
11 against chooses to rely upon the initial written
12 response submitted pursuant to subdivision (2) of this
13 subsection (a).

14 (6) If the person complained against fails to respond
15 in accordance with the requirements of subdivision (5) of
16 this subsection (a), the failure to respond shall be
17 considered a waiver of the requirements of this subsection
18 (a) and nothing in this Section shall preclude the Agency
19 from proceeding pursuant to subsection (b) of this Section.

20 (7) Within 30 days after ~~of~~ the Agency's receipt of a
21 written response submitted by the person complained
22 against pursuant to subdivision (2) of this subsection (a) ~~or~~
23 if a meeting is not requested ~~or~~ pursuant to subdivision
24 (5) of this subsection (a) ~~or~~ if a meeting is held, or within
25 a later time period as agreed to by the Agency and the
26 person complained against, the Agency shall issue and

1 serve, by certified mail, upon the person complained
2 against (i) a ~~written notice informing the person of its~~
3 ~~acceptance, rejection, or proposed modification to the~~
4 proposed Compliance Commitment Agreement or (ii) a notice
5 that one or more violations cannot be resolved without the
6 involvement of the Office of the Attorney General or the
7 State's Attorney of the county in which the alleged
8 violation occurred and that no proposed Compliance
9 Commitment Agreement will be issued by the Agency for those
10 violations. The Agency shall include terms and conditions
11 in the proposed Compliance Commitment Agreement that are,
12 in its discretion, necessary to bring the person complained
13 against into compliance with the Act, any rule adopted
14 under the Act, any permit granted by the Agency, or any
15 condition of such a permit. The Agency shall take into
16 consideration the proposed terms for the proposed
17 Compliance Commitment Agreement that were provided under
18 subdivision (a) (2) (B) or (a) (5) (B) of this Section by the
19 person complained against. In addition, the Agency may
20 include in the proposed Compliance Commitment Agreement a
21 proposed administrative penalty not to exceed \$10,000,
22 payable to the Environmental Protection Trust Fund. The
23 administrative penalty shall be based on the type of
24 violations, the length of time during which the violations
25 occurred, and the potential risk to human health and the
26 environment caused by the violations ~~as contained within~~

1 ~~the written response.~~

2 (7.5) Within 30 days after the receipt of the Agency's
3 proposed Compliance Commitment Agreement by the person
4 complained against, the person shall either (i) agree to
5 and sign the proposed Compliance Commitment Agreement
6 provided by the Agency and submit the signed Compliance
7 Commitment Agreement, along with the specified agreed
8 administrative penalty payable to the Environmental
9 Protection Trust Fund, to the Agency by certified mail or
10 (ii) notify the Agency in writing by certified mail of the
11 person's rejection of the proposed Compliance Commitment
12 Agreement. If the person complained against fails to
13 respond to the proposed Compliance Commitment Agreement
14 within 30 days as required under this paragraph, the
15 proposed Compliance Commitment Agreement is deemed
16 rejected by operation of law. Any Compliance Commitment
17 Agreement entered into under item (i) of this paragraph may
18 be amended in writing by mutual agreement between the
19 Agency and the signatory to the Compliance Commitment
20 Agreement, the signatory's legal representative, or the
21 signatory's agent.

22 (7.6) No person shall violate the terms or conditions
23 of a Compliance Commitment Agreement entered into under
24 subdivision (a)(7.5)(i) of this Section.

25 (8) Nothing in this subsection (a) is intended to
26 require the Agency to enter into Compliance Commitment

1 Agreements for any alleged violation that the Agency
2 believes cannot be resolved without the involvement of the
3 Office of the Attorney General or the State's Attorney of
4 the county in which the alleged violation occurred, for,
5 among other purposes, the imposition of statutory
6 penalties.

7 (9) The Agency's failure to respond within 30 days to a
8 written response submitted pursuant to subdivision (2) of
9 this subsection (a), ~~if a meeting is not requested,~~ or
10 pursuant to subdivision (5) of this subsection (a), ~~if a~~
11 meeting is held, ~~within 30 days,~~ or within the time period
12 otherwise agreed to in writing by the Agency and the person
13 complained against, shall be deemed an acceptance by the
14 Agency of the proposed terms of the Compliance Commitment
15 Agreement for the violations alleged in the written notice
16 issued under subdivision (1) of this subsection (a) as
17 contained within the written response.

18 (10) If the person complained against complies with the
19 terms of a Compliance Commitment Agreement accepted
20 pursuant to this subsection (a), the Agency shall not refer
21 the alleged violations which are the subject of the
22 Compliance Commitment Agreement to the Office of the
23 Illinois Attorney General or the State's Attorney of the
24 county in which the alleged violation occurred. However,
25 nothing in this subsection is intended to preclude the
26 Agency from continuing negotiations with the person

1 complained against or from proceeding pursuant to the
2 provisions of subsection (b) of this Section for alleged
3 violations that ~~which~~ remain the subject of disagreement
4 between the Agency and the person complained against
5 following fulfillment of the requirements of this
6 subsection (a).

7 (11) Nothing in this subsection (a) is intended to
8 preclude the person complained against from submitting to
9 the Agency, by certified mail, at any time, notification
10 that the person complained against consents to waiver of
11 the requirements of subsections (a) and (b) of this
12 Section.

13 (12) Agreed administrative penalties paid to the
14 Environmental Protection Trust Fund under this Section
15 shall be used in accordance with the provisions of the
16 Environmental Protection Trust Fund Act.

17 (13) The Agency shall have the authority to adopt rules
18 for the administration of subsection (a) of this Section.
19 The rules shall be adopted in accordance with the
20 provisions of the Illinois Administrative Procedure Act.

21 (b) For alleged violations that remain the subject of
22 disagreement between the Agency and the person complained
23 against following fulfillment of the requirements of
24 subsection (a) of this Section, and as a precondition to the
25 Agency's referral or request to the Office of the Illinois
26 Attorney General or the State's Attorney of the county in which

1 the alleged violation occurred for legal representation
2 regarding an alleged violation that may be addressed pursuant
3 to subsection (c) or (d) of this Section or pursuant to Section
4 42 of this Act, the Agency shall issue and serve, by certified
5 mail, upon the person complained against a written notice
6 informing that person that the Agency intends to pursue legal
7 action. Such notice shall notify the person complained against
8 of the violations to be alleged and offer the person an
9 opportunity to meet with appropriate Agency personnel in an
10 effort to resolve any alleged violations that could lead to the
11 filing of a formal complaint. The meeting with Agency personnel
12 shall be held within 30 days after ~~of~~ receipt of notice served
13 pursuant to this subsection upon the person complained against,
14 unless the Agency agrees to a postponement or the person
15 notifies the Agency that he or she will not appear at a meeting
16 within the 30-day time period. Nothing in this subsection is
17 intended to preclude the Agency from following the provisions
18 of subsection (c) or (d) of this Section or from requesting the
19 legal representation of the Office of the Illinois Attorney
20 General or the State's Attorney of the county in which the
21 alleged violations occurred for alleged violations which
22 remain the subject of disagreement between the Agency and the
23 person complained against after the provisions of this
24 subsection are fulfilled.

25 (c)(1) For alleged violations which remain the subject of
26 disagreement between the Agency and the person complained

1 against following waiver, pursuant to subdivision (10) of
2 subsection (a) of this Section, or fulfillment of the
3 requirements of subsections (a) and (b) of this Section,
4 the Office of the Illinois Attorney General or the State's
5 Attorney of the county in which the alleged violation
6 occurred shall issue and serve upon the person complained
7 against a written notice, together with a formal complaint,
8 which shall specify the provision of the Act, ~~or the rule,~~
9 ~~or~~ regulation, ~~or~~ permit, or term or condition thereof
10 under which such person is said to be in violation, and a
11 statement of the manner in, and the extent to which such
12 person is said to violate the Act, ~~or such rule,~~ ~~or~~
13 regulation, ~~or~~ permit, or term or condition thereof and
14 shall require the person so complained against to answer
15 the charges of such formal complaint at a hearing before
16 the Board at a time not less than 21 days after the date of
17 notice by the Board, except as provided in Section 34 of
18 this Act. Such complaint shall be accompanied by a
19 notification to the defendant that financing may be
20 available, through the Illinois Environmental Facilities
21 Financing Act, to correct such violation. A copy of such
22 notice of such hearings shall also be sent to any person
23 that has complained to the Agency respecting the respondent
24 within the six months preceding the date of the complaint,
25 and to any person in the county in which the offending
26 activity occurred that has requested notice of enforcement

1 proceedings; 21 days notice of such hearings shall also be
2 published in a newspaper of general circulation in such
3 county. The respondent may file a written answer, and at
4 such hearing the rules prescribed in Sections 32 and 33 of
5 this Act shall apply. In the case of actual or threatened
6 acts outside Illinois contributing to environmental damage
7 in Illinois, the extraterritorial service-of-process
8 provisions of Sections 2-208 and 2-209 of the Code of Civil
9 Procedure shall apply.

10 With respect to notices served pursuant to this
11 subsection (c)(1) that ~~which~~ involve hazardous material or
12 wastes in any manner, the Agency shall annually publish a
13 list of all such notices served. The list shall include the
14 date the investigation commenced, the date notice was sent,
15 the date the matter was referred to the Attorney General,
16 if applicable, and the current status of the matter.

17 (2) Notwithstanding the provisions of subdivision (1)
18 of this subsection (c), whenever a complaint has been filed
19 on behalf of the Agency or by the People of the State of
20 Illinois, the parties may file with the Board a stipulation
21 and proposal for settlement accompanied by a request for
22 relief from the requirement of a hearing pursuant to
23 subdivision (1). Unless the Board, in its discretion,
24 concludes that a hearing will be held, the Board shall
25 cause notice of the stipulation, proposal and request for
26 relief to be published and sent in the same manner as is

1 required for hearing pursuant to subdivision (1) of this
2 subsection. The notice shall include a statement that any
3 person may file a written demand for hearing within 21 days
4 after receiving the notice. If any person files a timely
5 written demand for hearing, the Board shall deny the
6 request for relief from a hearing and shall hold a hearing
7 in accordance with the provisions of subdivision (1).

8 (3) Notwithstanding the provisions of subdivision (1)
9 of this subsection (c), if the Agency becomes aware of a
10 violation of this Act arising from, or as a result of,
11 voluntary pollution prevention activities, the Agency
12 shall not proceed with the written notice required by
13 subsection (a) of this Section unless:

14 (A) the person fails to take corrective action or
15 eliminate the reported violation within a reasonable
16 time; or

17 (B) the Agency believes that the violation poses a
18 substantial and imminent danger to the public health or
19 welfare or the environment. For the purposes of this
20 item (B), "substantial and imminent danger" means a
21 danger with a likelihood of serious or irreversible
22 harm.

23 (d) (1) Any person may file with the Board a complaint,
24 meeting the requirements of subsection (c) of this Section,
25 against any person allegedly violating this Act, any rule
26 or regulation adopted under this Act, any permit or term or

1 condition of a permit, or any Board order. The complainant
2 shall immediately serve a copy of such complaint upon the
3 person or persons named therein. Unless the Board
4 determines that such complaint is duplicative or
5 frivolous, it shall schedule a hearing and serve written
6 notice thereof upon the person or persons named therein, in
7 accord with subsection (c) of this Section.

8 (2) Whenever a complaint has been filed by a person
9 other than the Attorney General or the State's Attorney,
10 the parties may file with the Board a stipulation and
11 proposal for settlement accompanied by a request for relief
12 from the hearing requirement of subdivision (c)(1) of this
13 Section. Unless the Board, in its discretion, concludes
14 that a hearing should be held, no hearing on the
15 stipulation and proposal for settlement is required.

16 (e) In hearings before the Board under this Title the
17 burden shall be on the Agency or other complainant to show
18 either that the respondent has caused or threatened to cause
19 air or water pollution or that the respondent has violated or
20 threatens to violate any provision of this Act or any rule or
21 regulation of the Board or permit or term or condition thereof.
22 If such proof has been made, the burden shall be on the
23 respondent to show that compliance with the Board's regulations
24 would impose an arbitrary or unreasonable hardship.

25 (f) The provisions of this Section shall not apply to
26 administrative citation actions commenced under Section 31.1

1 of this Act.

2 (Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.